

MAINE REAL ESTATE NEWS



Department of Professional and Financial Regulation - Office of Licensing & Registration
Maine Real Estate Commission

From the Director's Desk

Carol J. Leighton

COMMISSION PROPOSES LEGISLATION

The Commission has introduced legislation to the 122nd Legislature to amend three sections of the Brokerage Act (Title 32, Chapter 114). As of the date of this article, the Commission's proposed legislation is not available as a legislative document ("L.D."). It is anticipated, however, that the LD will be printed sometime in January or February and a public hearing will be held before the Joint Standing Committee on Business, Research and Economic Development. As with any proposed legislation, the proposal may not receive legislative support and, therefore, not be enacted or it may undergo significant change as it proceeds through the legislative process. With that understanding, what follows is a brief outline of the proposal as introduced by the Real Estate Commission:

(1) The proposal amends the Brokerage Agreement subsection (§13177) to require a written brokerage agreement, including 4 required contract terms, for all listing and buyer-representation brokerage contracts that create an agent-client, fiduciary level relationship;

(2) The proposal amends the Trust Account subsection (§13178) to require that brokerage trust accounts be maintained in financial institutions authorized to do business in Maine, as defined by Title 9-B, section 131, subsection 17-A, which includes banks but not

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What the Commission is Hearing...

"The number of continuing education hours has increased from 15 to 21"

No. The number of continuing education hours to renew a license has not increased. It is still 15 clock hours, 3 clock hours of which must be the current core course - "Offers and Counter Offers". Note: The Maine Association of Realtors® may propose legislation to increase the continuing education hours.

"Is the Realtor® ethics course the new core course"

No. The National Association of Realtors® may require completion of the "Ethics" course for purposes related to membership in the trade association and it is approved for 3 clock hours of continuing education but it is not the current core course approved by the Commission. The current core course is "Offers and Counter Offers". The Commission will consider development of a new core course sometime in June 2005. Until the Commission approves a new core course, the current core course is the only core course available.

"Buyers and sellers need to contact the Real Estate Commission for information regarding the Maine Residential Real Estate Mediation rules"

No. The Maine Association of Realtors® standard purchase and sales contract form includes a provision requiring the parties to the contract to mediate disputes consistent with the Maine Residential Real Estate Mediation rules. Information on the mediation process required by the terms of the purchase and sales contract should be available from the real estate company that prepared the contract.

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Many Real Estate Commission fees were reduced effective December 1, 2004. Visit our website at www.maineprofessionalreg.org for updated forms!



Real Estate Brokerage Advertising - What are the Rules ?

Carol J. Leighton

In the Spring 2004 edition of the Commission's newsletter *Maine Real Estate News*, an article titled "Advertising Rules - Revisited" referenced the Commission's advertising rule (Chapter 330, Section 1) and provided responses to advertising-related questions from licensees to the Commission staff. In response to the article, the Commission received inquiries from designated brokers and others asking for further clarification regarding brokerage advertising standards. These standards apply to all advertising mediums, including newspapers, magazines, television, radio, "for sale" signs, business cards, websites and other electronic mediums. The Commission has prepared the following check list of information in response to those inquiries:

- Advertising, whether it is the promotion of real estate for purchase or sale or the brokerage services to be provided, may only be made on behalf of the company with the designated broker's knowledge and consent (regardless of who has prepared the advertisement or is paying for it);
- Advertising must be done in the real estate company's name as licensed by the Commission;
- Advertising must include contact information where the public can contact the real estate company by phone or in person at the company's licensed office;
- Advertising may also include the licensee's direct phone number or other contact information (not necessary to include the words "home phone" or "cell phone") as long as the company's phone number or other contact information is included; and,
- Advertising must be free from deception and shall not misrepresent the condition of the property, terms of the sale, value of the real estate, company policies or brokerage services.

Have you been asked to sign a license application as a reference?

One of the qualifications (32 MRSA §13191 [5]) for a license requires the applicant to submit the notarized signatures of three persons, who are not related to the applicant, who have known the applicant for at least one year, and who can attest to the applicant's good reputation for honesty, trustworthiness and competence. The recommendation of the 3 references is a significant part of the license qualification process. Do not agree to act as a reference just to help someone complete the application as soon as possible. If questions arise concerning the applicant, the Commission will contact the references to obtain additional information regarding the reference's notarized statements, which may include testifying at an adjudicatory hearing.

Did you know you can check license status on-line?

Go to www.maineprofessionalreg.org, and click on the green button that says "find a licensee". Select "start search", then choose "Real Estate Commission" from the drop-down list. Type in individual's last name and click on "start search". This is linked to our licensing database, so information is updated in real time.

Current Cases

Karen L. Bivins, Deputy Director

On May 20, 2004 the members of the Commission ratified their decision reached after a hearing involving True Hall of Tenants Harbor, Maine. Hall is a designated broker who allowed his company to advertise properties listed exclusively with another company.

An internet web site for Hall's agency included a section with information about properties listed with Jaret & Cohn Real Estate in Camden. The advertising did not state that the properties were listed with another company and not with Hall's company. An email link for further information directed the viewer to Hall's company. Jaret & Cohn Real Estate had not given permission for Hall to include their listings on the web site, nor had the owners of the properties. When contacted by the designated broker of Jaret & Cohn Real Estate and asked to remove the listings from the web site, Hall did not take steps to remove the listings.

Hall was found in violation of two counts of 32 M.R.S.A. § 13067(1)(A), one count of 32 M.R.S.A. § 13067(1)(H), and Chapter 330 Section 1(B) of the Maine Real Estate Commission Rules. He was ordered to cease and desist immediately advertising property for sale without the consent and express permission of the proper owner, and to pay a fine of \$4,000.00.

On May 20, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Richard Craib of Scarborough, Maine. Craib is an associate broker who failed to protect and promote the interests of his client.

Craib listed property for sale. He presented the seller with an offer from a buyer, but did not tell the seller about another interested party. The seller and the buyer eventually entered into an agreement. Craib then negotiated on the buyer's behalf, before the buyer actually owned the property, with the other interested party to purchase a portion of what the first buyer was purchasing from the seller. Craib did not tell the seller about the subsequent activity. The seller eventually learned of the negotiations from the second interested party and demanded to be released from all agreements with Craib's company and with the buyer.

Craib was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (F) and (G); 13275(1); 13278(1) and Chapter 330 Sections 7 and 8 of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$4,000.00 and to complete one educational course.

2. Ronald D. Gallant, Jr. of Milbridge, Maine. Gallant is a designated broker who failed to protect and promote the interest of his client.

Gallant listed a property for sale. He presented the seller with an offer that required the sale of the buyer's property. The seller accepted the offer with the provision that her property would

continue to be marketed.

Gallant showed the property to another party and told that party that the property was under contract but the buyer first had to sell another property. Gallant did not have permission to disclose the terms of the contract. The second party made an offer to purchase the seller's property. There was no mention in the offer that the seller needed to obtain a release from the first sales agreement, or that the second offer was a back up offer. The seller accepted the offer. Gallant exposed his client to potentially being obligated to sell the property to two buyers.

Gallant informed the first buyer about the second contract and was told that the first contract would be released, although nothing was obtained in writing that confirmed the status of the contracts. Subsequently, the first buyer met the terms of the contract and informed Gallant that the sale would close. The second buyer agreed to terminate the second sales agreement.

Gallant was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and (G), and Chapter 330 Section 13 of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$1,000.00 and to complete one educational course.

3. Michael A. Miller of Portland, Maine. Miller is an associate broker who failed to notify the Director within 10 days of a conviction.

In March 2004 Miller notified the Commission that he had been convicted of operating under the influence in December 2003. The Director obtained information that Miller had also been convicted in April 2000 of driving to endanger. Miller confirmed that he been convicted in April 2000 and had not notified the Commission, stating that he was not aware that the 2000 violation was a criminal conviction.

Miller was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$300.00.

On June 17, 2004 the members of the Commission ratified their decision reached after a hearing involving Cynthia Pouliot of Limerick, Maine. Pouliot is a broker who failed to pay a check returned for insufficient funds.

Pouliot renewed her license and paid the renewal fee with a check drawn on an account with insufficient funds. Several notices were sent to Pouliot, informing her that she must pay the amount of the check plus a service charge of \$20.00. Nothing was received from her.

Pouliot was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (B). Her license was suspended until such time as she pays the amount of the original check plus the service charge, and she successfully completes the course "The Role of the Designated Broker."

On June 17, 2004 the members of the Commission

Current Cases (continued)

accepted the following consent agreements entered into by the Director and various licensees:

1. David J. Ball of Blue Hill, Maine. Ball is a sales agent who failed to disclose criminal convictions.

Ball stated in his sales agent license application that he had been convicted of operating under the influence. The Director learned that Ball had been convicted in 1991 of criminal mischief and in 2001 of operating under the influence. After being contacted by the Director, Ball submitted an amendment to the application disclosing a conviction in 1990 for operating under the influence, in 1991 for criminal conviction, and in 2001 for operating under the influence.

Ball was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

2. Danielle S. Bernier of Saco, Maine. Bernier is a sales agent who failed to disclose a criminal conviction.

Bernier stated on her sales agent license application that she had been convicted in 1994 of disorderly conduct and in 2000 of assault. After the license was issued, the Director asked for additional information about the convictions. Bernier provided the requested information as well as information about a conviction in 1996 for theft by unauthorized taking/transfer.

Bernier was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.

3. Peter G. Bryant of Portland, Maine. Bryant is a sales agent who failed to disclose a criminal conviction.

Bryant stated on his sales agent license application that he had not been convicted by any court of any type of crime. The Director learned that Bryant had been convicted in 1978 of forgery by information. After being contacted by the Director, Bryant submitted an amendment to the application disclosing the conviction.

Bryant was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

4. Robert A. Houle of Kennebunk, Maine. Houle is an associate broker who failed to reference an easement in offers he prepared.

Houle showed his buyer clients two parcels of land listed by another agent in his company. The property consisted of three parcels, two of which were known as A and C, which were being sold together, and B, which was being sold separately. The listing information included a minimized copy of a survey of the property that showed a 20 foot easement over parcel C. The listing agent told Houle that the sellers intended to convey a 20 foot pedestrian easement over

parcel C to the Mousam River.

Houle showed the property to his buyer clients. They told Houle that they were interested in parcel B and the water access was important to them. He prepared an offer for them to purchase parcel B, but did not include any reference to an easement over parcel C. Subsequently, Houle showed parcel A-C to another buyer client. He prepared an offer for the purchase of parcel A-C and again did not include any reference to an easement over parcel C.

The sales of both parcels closed. The buyer of parcel A-C discovered that the survey of the property which was included with the listing information was not recorded. The buyer contacted the new owners of parcel B and informed them that he was not granting an easement over parcel C.

Houle was found in violation of 32 M.R.S.A. § 13067(1)(G). He agreed to pay a fine of \$1,000.00.

5. Daniel J. McCarthy of Windham, Maine. McCarthy is a sales agent who failed to disclose a criminal conviction.

McCarthy stated on his sales agent license application that he had not been convicted by any court of any type of crime. The Director learned that McCarthy had been convicted in 1976 of obstructing government administration. After being contacted by the Director, McCarthy submitted an amendment to the application disclosing the conviction.

McCarthy was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

6. Brian Samia of Sanford, Maine. Samia is an associate broker who failed to notify the Director within 10 days of a conviction.

Samia was originally licensed as a sales agent in April 2002 and as an associate broker in May 2004. Samia notified the Director in May 2004 that he had been convicted in December 2002 of operating under the influence.

Samia was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

7. Howard P. Sawyer, III of Hope, Maine. Sawyer is a designated broker who failed to promote his clients' interests.

Sawyer prepared an offer for his buyer clients to purchase a parcel of land listed with another company. After submitting the offer to the listing company, Sawyer was informed by the listing agent that another offer had been received. He left a message for his clients about the other offer. Before hearing anything from his clients, Sawyer submitted his own offer to purchase the property at a higher price than his clients had offered.

When his clients found out about Sawyer's offer, they asked him to withdraw his offer and to terminate their representation agreement. Sawyer withdrew his offer to purchase the property. His clients subsequently purchased the

Current Cases (continued)

property, working directly with the listing agent.

Sawyer was found in violation of 32 M.R.S.A. § 13067(1)(G). He agreed to a 30 days suspension of his license, and to pay a fine of \$3,000.00.

8. Lori A. Shaver of Belfast, Maine. Shaver is a sales agent who failed to disclose a criminal conviction.

Shaver stated on her sales agent license application that she had not been convicted by any court of any type of crime. The Director learned that Shaver had been convicted in 1988 of theft by deception. After being contacted by the Director, Shaver stated that she knew the conviction was on her record but did not think of it when completing the application. She submitted an amendment to the application disclosing the conviction.

Shaver was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$300.00.

9. Walter A. Thompson, Jr. of Exeter, Maine. Thompson is an associate broker who failed to comply with a Commission order.

Thompson had been ordered to pay a fine of \$900.00 and to submit evidence of completion of 12 clock hours of approved continuing education. Thompson failed to submit either the fine or the course certificates.

Thompson was found in violation of 32 M.R.S.A. § 13067(1)(M). He agreed to a 90 day suspension of his license, and to comply fully with the previous order before the reissuance of his license.

10. Brian R. York of South China, Maine. York is a broker who failed to notify the Director within 10 days of a conviction.

York submitted his license renewal application in May 2004. On the renewal he disclosed that he had been convicted in December 2002 of operating under the influence.

York was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

On July 15, 2004 the members of the Commission ratified their decision reached after a hearing involving Richard A. Dupuis of Lewiston, Maine. Dupuis is a sales agent who failed to disclose criminal convictions on his license application and in a discussion with the Director.

Dupuis stated on his sales agent license application that he had been convicted of a crime. He included a statement about a protection from abuse judgment in February 2001. The Director requested further information, and Dupuis subsequently informed the Director that he spoke with a court employee and the protection from abuse judgment was a civil matter. Dupuis informed the Director that he should not have indicated on his application that he had a conviction.

The Director subsequently learned that Dupuis had been convicted of assault in 1998. In a later discussion between Dupuis and the Director, Dupuis did not recall a conviction for assault. He then recalled a confrontation with a woman and that he went to court and was placed on probation. The Director also learned that Dupuis had been convicted of operating under the influence in 1993.

Dupuis was found in violation of 32 M.R.S.A. §§ 13067(1)(A) and (F), and 13191(1). The Commission ordered the immediate revocation of Dupuis' sales agent license.

On July 15, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Janet A. Hamel of Standish, Maine. Hamel is a sales agent who failed to disclose criminal convictions.

Hamel stated on her sales agent license application that she had not been convicted by any court of any type of crime. The Director learned that Hamel had been convicted in 1987 of endangering the welfare of a child and in 1991 of disorderly conduct. After being contacted by the Director, Hamel submitted an amendment to the application disclosing the convictions.

Hamel was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$300.00.

2. Jeffrey A. Mason of Gorham, Maine. Mason is a designated broker who failed to properly notify the parties of his intention to release a disputed deposit.

A broker in Mason's company negotiated a purchase and sale agreement between sellers whose property was listed with the company, and a buyer. The contract was contingent upon a satisfactory building inspection. After the inspection was completed, the buyer signed a form stating that the inspection was unsatisfactory, that he was declaring the contract null and void, and that he wanted his earnest money deposit returned.

The sellers told Mason that they would not sign a release form and told Mason that he could not release the deposit. Mason told the sellers that the wording in the contract under the inspection clause allowed him to return the deposit to the buyer without the consent of the sellers. Mason returned the deposit to the buyer without providing written notice to the parties that he intended to release the disputed deposit 30 days after the parties received his notice.

Mason was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(l)(3) of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$1,000.00.

3. Bernard T. Minott of Windham, Maine. Minott is a

Current Cases (continued)

sales agent who failed to disclose a criminal conviction.

Minott stated on his sales agent license application that he had been convicted of three criminal convictions. After a review of the information a license was issued. The Director then learned that Minott had been convicted of 1991 of disorderly conduct. The conviction was not listed on Minott's application. After being contacted by the Director, Minott submitted an amendment to the application disclosing the conviction.

Minott was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

4. Susan D. Russell of South Portland, Maine. Russell is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Russell certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Russell had not completed 15 hours of education.

Russell was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She agreed to pay a fine of \$500.00, to submit documentation of completion of 15 hours of approved continuing education, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal.

5. Mary Jane Thibodeau Carroll of Scarborough, Maine. Thibodeau Carroll failed to comply with the terms of an executed and approved consent agreement.

Thibodeau Carroll entered into a consent agreement in which she agreed to a one year suspension of her license, to pay a fine, and to submit documentation of completion of 15 clock hours of approved continuing education. She did not submit documentation of continuing education. Thibodeau Carroll notified the Commission that she was undergoing medical treatment and requested additional time to complete the education.

Thibodeau Carroll was found in violation of 32 M.R.S.A. § 13067(1)(M). She agreed to submit documentation of completion of 15 clock hours of approved continuing education before the reissuance of her license.

On August 19, 2004 the members of the Commission ratified their decisions, reached after hearings, concerning the following:

1. Herbert R. Dickey III of Lincoln, Maine. Dickey is a broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Dickey

certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Dickey had completed 12 hours of education.

Dickey was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He was ordered to pay a fine of \$500.00, to submit documentation of completion of 3 hours of approved continuing education, and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal.

2. William P. Mouflouze of Portsmouth, New Hampshire. Mouflouze is a designated broker who failed to comply with the terms of a Commission order.

Mouflouze was ordered previously to pay a fine of \$900.00 and to submit documentation showing completion of 6 hours of approved continuing education. Mouflouze did not comply with either provision of the order.

Mouflouze was found in violation of 32 M.R.S.A. § 13067(1)(M). The Commission ordered the immediate revocation of Mouflouze's designated broker license.

On August 19, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Jean A. Calderwood of Brunswick, Maine. Calderwood is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Calderwood certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Calderwood had completed 14 hours of education.

Calderwood was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She agreed to pay a fine of \$500.00, to submit documentation of completion of at least 2 hours of approved continuing education, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal.

2. Jonathan E. Foley of Bangor, Maine. Foley is a sales agent who failed to disclose a criminal conviction.

Foley stated on his sales agent license application that he had not been convicted of a crime by any court. The Director learned that Foley had been convicted in 1991 of criminal mischief. After being contacted by the Director, Foley submitted an amendment to the application disclosing the conviction.

Foley was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

Current Cases (continued)

3. Linda N. Gardiner of Bangor, Maine. Gardiner is a sales agent who failed to disclose a criminal conviction.

Gardiner stated on her sales agent license application that she had not been convicted of a crime by any court. After the license was issued, Gardiner disclosed to the Director that she had been convicted of shoplifting when she was an 18 year old high school student in New Jersey.

Gardiner was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.

4. Donna L. Herring of Greenville, Maine. Herring is a broker who failed to notify the Commission within 10 days that she had received disciplinary action from another licensing board.

On April 6, 2004 the Board of Real Estate Appraisers ordered the revocation of Herring's appraiser license for a period of 2 years, ordered Herring to pay a fine of \$4,500.00 and hearing costs of \$3,931.96. Herring did not notify the Commission of the order within 10 days of receiving the order.

Herring was found in violation of 32 M.R.S.A. §§ 13195 and 13067(1)(A). She agreed to pay a fine of \$200.00 and not to perform any appraisal services under her broker license until such time as her appraiser license is reinstated.

5. Barbara Matthews of Brunswick, Maine. Matthews is an associate broker who failed to notify the Commission within 10 days of a conviction.

On July 2, 2004 Matthews notified the Commission that she had been convicted in April 2004 of operating under the influence.

Matthews was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of \$200.00.

6. Duane A. O'Halloran of Bangor, Maine. O'Halloran is a sales agent who failed to disclose a criminal conviction.

O'Halloran stated on his sales agent license application that he had not been convicted of a crime by any court. The Director learned that O'Halloran had been convicted in 1986 of assault. After being contacted by the Director, O'Halloran submitted an amendment to the application disclosing the conviction.

O'Halloran was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

7. Anthony B. Taylor of Brunswick, Maine. Taylor is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Taylor certified that he had completed 15 hours of approved

continuing education. After being selected for audit, it was discovered that Taylor had not completed any education prior to the expiration date of his license.

Taylor was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He agreed to the revocation of his license.

On September 16, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Mary Lee Brown of Boothbay Harbor, Maine. Brown is a designated broker who failed make an earnest money deposit within 3 business days of the acceptance of an offer.

Brown showed to a buyer property she had listed for sale with her agency. An offer was received which was accepted on July 13, 2002. An earnest money deposit included with the offer was not placed in the agency trust account until 10 days after acceptance of the offer.

Brown was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(C) of the Maine Real Estate Commission Rules.

2. Deborah L. Coulp of Portsmouth, New Hampshire. Coulp is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of her license renewal application, Coulp certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Coulp had completed only 12 hours of education, 9 of which were completed prior the renewal of her license, and 3 of which were completed after her license was renewed.

Coulp was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She agreed to pay a fine of \$700.00, to complete 3 clock hours of education, and to submit documentation of completion of 15 hours of approved continuing education with her next license renewal.

3. Janice L. Hersom of Bath, Maine. Hersom is a sales agent who failed to disclose a criminal conviction.

Hersom stated in her sales agent license application that she had been convicted of assault, criminal speeding, and operating under the influence. The Director learned that Hersom had been convicted in 1984 of theft. After being contacted by the Director, Hersom submitted an amendment to the application disclosing the conviction.

Hersom was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.

Current Cases (continued)

On October 28, 2004 the members of the Commission ratified their decisions, reached after hearings, concerning the following:

1. Monica L. Bradshaw of Lewiston, Maine.

Bradshaw is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of her license.

As part of her license renewal application, Bradshaw certified that she had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Bradshaw completed only 5 hours of continuing education prior to her license expiration date.

Bradshaw was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). She was ordered to pay a fine of \$2,000.00. In addition, the Commission ordered the immediate revocation of Bradshaw's associate broker license.

2. Christopher H. Longstaff of Kittery, Maine.

Longstaff is a sales agent who was previously ordered to pay a fine in two installments, was ordered to work only with specific licensees within his agency, and was ordered to submit periodic reports from his designated broker. He failed to make the two fine installments by the payment dates specified by the Commission members.

Longstaff was found in violation of 32 M.R.S.A. § 13067(1)(M). The Commission ordered the immediate revocation of Longstaff's sales agent license.

On October 28, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Deborah Chase of Wells, Maine. Chase is an

associate broker who failed to notify the Director of a conviction within 10 days. On September 7, 2004 Chase notified the Director that she had been convicted on October 15, 2003 of a Class E offense of failure to register vehicle.

Chase was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of \$200.00.

2. Kevin C. Cloutier of South Portland, Maine.

Cloutier is an associate broker who improperly disbursed interest earned on a deposit.

Cloutier was the listing agent in a transaction in which the buyer provided an earnest money deposit of \$75,000.00. The deposit earned interest in an agency trust account and when the closing was scheduled, Cloutier had a check made out to the sellers for the interest earned on the deposit. The interest was paid to the sellers, and subsequently Cloutier determined that the interest should have been paid to the buyers. He requested that the sellers pay the money to the buyers, but they did not.

Cloutier was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 320 Section 3(A) of the Maine Real Estate Commission Rules. He agreed to pay the amount of the interest, \$592.10, to the buyers of the property.

3. Daniel M. Dunfey of Portsmouth, New Hampshire.

Dunfey is a broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Dunfey certified that he had completed 15 hours of approved continuing education. After being selected for audit, it was discovered that Dunfey completed only 12 hours of continuing education prior to his license expiration date.

Dunfey was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He agreed to pay a fine of \$600.00, to submit documentation of his completion of 3 hours of approved continuing education, and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.

4. Glen E. Giasson of Lisbon, Maine. Giasson is an associate broker who failed to notify the Director of a conviction within 10 days.

Giasson was originally licensed as a sales agent on September 4, 2002. On September 4, 2004 he submitted his associate broker license application and disclosed that he had been convicted on December 3, 2003 of the Class D offense of operating under the influence.

Giasson was found in violation of 32 M.R.S.A. § 13195. He agreed to pay a fine of \$200.00.

5. Lucille A. Holt of Portland, Maine. Holt is a designated broker who had irregularities in her trust account and trust account procedures.

Holt's agency utilized three different trust accounts for maintaining earnest money deposits for clients and customers. One account was a depository account, from which money was transferred daily to a maintenance account from which disbursements were made. In addition, the agency utilized an overnight investment account, into which money in the maintenance account was swept nightly for an investment transaction, and was then returned to the maintenance account along with the interest earned. During review of the matter, Holt's agency stopped using the overnight investment account.

It was discovered that earnest money deposits were not consistently made within 3 business days of the acceptance of offers. Holt failed to provide verification requested by the Director that the depository and maintenance accounts were in compliance with statutory requirements for trust accounts, and that her bank considered the accounts to be free from trustee process. The investment account was not

Current Cases (continued)

identified as a real estate trust account and was not free from trustee process. In addition, clients and customers did not give express permission for deposits to be invested. Holt acted as trustee for those investments.

Holt was found in violation of 32 M.R.S.A. §§ 13067(1)(L) and 13178; and Chapter 320 Sections 3(A) and (C) of the Maine Real Estate Commission Rules. She agreed to pay a fine of \$1,000.00; to submit her trust account procedures for ensuring timely deposits of earnest money; to verify the identity of all agency trust accounts and that they are free from trustee process; and to submit to random audits for a period of 2 years.

6. Heather M. Wilkinson of Hallowell, Maine. Wilkinson is an associate broker who failed to notify the Director of a conviction within 10 days.

Wilkinson was originally licensed as a sales agent on October 1, 2002. As part of her associate broker license application submitted on September 29, 2004, Wilkinson disclosed that she had been convicted 3 times of operating after suspension between September 2001 and the date of her application. The Director requested further information from Wilkinson and from the Division of Motor Vehicles. It was discovered that Wilkinson had 4 convictions for operating after suspension, on January 21, 2003, October 15, 2003, June 18, 2004 and August 6, 2004.

Wilkinson was found in violation of 32 M.R.S.A. §§ 13067(1)(H) and 13195. She agreed to pay a fine of \$500.00.

On November 18, 2004 the members of the Commission ratified their decisions, reached after hearings, concerning the following:

1. Gerald S. Nessmann of Dexter, Maine. Nessmann is an associate broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Nessmann certified that he had completed 15 hours of approved continuing education. After being selected for an audit, it was discovered that Nessmann had completed 12 hours of continuing education prior to the renewal of his license.

Nessmann was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13197(1). He was ordered to pay a fine of \$500.00 and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.

2. Donald P. Rivers of York Beach, Maine. Rivers is a designated broker who failed to complete 15 hours of approved continuing education prior to the expiration of his license.

As part of his license renewal application, Rivers

certified that he had completed 15 hours of approved continuing education. After being selected for an audit, it was discovered that Rivers had completed 3 hours of continuing education prior to the renewal of his license, and 12 hours after he was notified of the audit.

Rivers was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and (F), and 13197(1). He was ordered to pay a fine of \$1,000.00, to complete the course "The Role of the Designated Broker" and to submit documentation of completion of 15 hours of approved continuing education with his next license renewal application.

On November 18, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Daniel Brewer of Caribou, Maine. Brewer is a broker who disclosed terms of an offer without prior written permission.

Brewer was the listing agent of a property that was under contract to be sold to a couple who were denied financing. The sellers agreed to extend the contract for a few months, at which time the buyers had been told they could reapply for financing. At some point, Brewer told the sellers that he had known the family of one of the buyers for many years and suggested that he could speak to the parents about the buyers' financing efforts. Brewer contacted the parents about various financing options. He did not have prior written permission from the parties to the contract to discuss the transaction with the parents of one of the buyers.

Brewer was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 330 Section 13 of the Maine Real Estate Commission Rules. He agreed to pay a fine of \$800.00.

2. Charlotte Davis of Livermore Falls, Maine. Davis is a broker who failed to provide required documents during a transaction.

Davis agreed to represent a buyer. Her agency practiced appointed agency and disclosed dual agency. Davis failed to provide the buyer with an appointed agency agreement or a disclosed dual agency consent agreement.

Davis was found in violation of 32 M.R.S.A. § 13067(1)(F) and Chapter 330 Sections 7 and 8(B) of the Maine Real Estate Commission Rules. She agreed to pay a fine of \$400.00.

3. Janis D. Dwinal of Auburn, Maine. Dwinal is a broker who failed to promote the interests of her principal.

Dwinal was contacted by a property owner about acting as a leasing agent. She also discussed with the owner listing the property for sale. An exclusive right to sell listing agreement was prepared which identified Dwinal as the

Current Cases (conclusion)

appointed agent of the seller. Subsequently, Dwinal was notified several times that the property owner wanted to lease the property but not sell it. She did not take any steps to change or cancel the listing agreement. Later, the property owner was granted an unconditional release from the agency.

Dwinal was found in violation of 32 M.R.S.A. § 13067(1)(G). She agreed to pay a fine of \$500.00.

4. Bruce A. Edgerly of Ogunquit, Maine. Edgerly is a sales agent who failed to disclose a criminal conviction.

Edgerly stated on his sales agent license application that he had not been convicted of any crime. The Director learned that Edgerly had been convicted in 1994 of public indecency. After being contacted by the Director, Edgerly submitted an amendment to the application disclosing the conviction.

Edgerly was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

5. Susanne P. Ketterer of Madison, Maine. Ketterer is a designated broker who failed to notify the Director of a conviction within 10 days. She disclosed on her May 26, 2004 license renewal application that she had been convicted of operating under the influence in March 2004.

Ketterer was found in violation of 32 M.R.S.A. § 13195. She agreed to pay a fine of \$200.00.

6. Kenneth J. Nelson of Bangor, Maine. Nelson is a sales agent who failed to disclose a criminal conviction.

Nelson stated on his sales agent license application that he had not been convicted of any crime. The Director learned that Nelson had been convicted in 1972 of larceny. After being contacted by the Director, Nelson submitted an amendment to the application disclosing the conviction.

Nelson was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$200.00.

7. Maryam A. Wyant of Sanford, Maine. Wyant is a sales agent who failed to disclose a criminal conviction.

Wyant stated on her sales agent license application that she had not been convicted of any crime. The Director learned that Wyant had been convicted in 2001 of hindering apprehension or prosecution. After being contacted by the Director, Wyant submitted an amendment to the application disclosing the conviction.

Wyant was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). She agreed to pay a fine of \$200.00.

On December 16, 2004 the members of the

Commission ratified their decision reached after a hearing concerning Camillo L. Breggia, III of Portland, Maine. Breggia is an associate broker who failed to complete 15 hours of continuing education prior to the expiration of his license.

As part of his license renewal application, Breggia certified that he had completed 15 hours of approved continuing education. After being selected for and notified of an audit, Breggia failed to provide documentation of completion of any clock hours of continuing education.

Breggia was found in violation of 32 M.R.S.A. §§ 13067(1)(D) and (F), and 13197(1). The Commission ordered the immediate revocation of Breggia's license.

On December 16, 2004 the members of the Commission accepted the following consent agreements entered into by the Director and various licensees:

1. Kenneth D. Heavner of Sherman Oaks, California. Heavner is a designated broker who failed to disclose disciplinary action from another state.

Heavner stated on his designated broker license application that he had not had a professional license revoked or suspended in Maine or any other state. Subsequently the Director learned that Heavner had been licensed in Oregon from 1991 to 1998, and that the license was revoked for failing to maintain a place of business in Oregon or notifying the Oregon Commission of a change of address. Heavner submitted additional information and disclosures in response to an inquiry from the Director concerning the past disciplinary action.

Heavner was found in violation of 32 M.R.S.A. §§ 13067(1)(F) and 13191(1). He agreed to pay a fine of \$600.00.

2. Kenneth L. Sassi of Pittsfield, Maine. Sassi is a sales agent who failed to disclose criminal convictions.

Sassi stated on his sales agent license application that he had been convicted of assault in September 2003. After discussions with the Director, Sassi's sales agent license was issued on April 2, 2004. Subsequently the Director learned that Sassi had been convicted in May 2004 of "possession of firearms by a person who has been committed to a mental hospital" arising from conduct occurring in August 2004.

Sassi was found in violation of 32 M.R.S.A. §§ 13067(1)(A), (C), and (D) and 13195. He agreed to the immediate revocation of his license.

Director's Desk

(Continued from Page 1)

Criminal convictions - what are they and what do I need to disclose to the Commission?

A criminal conviction may be the basis for denial of a license or as grounds for discipline against a licensee. License applicants are required to make full disclosure of criminal convictions at the time of applying for a license (32 MRSA §13174 [3]) and licensees are required to disclose a criminal conviction within 10 days of the conviction (32 MRSA §13195). Both disclosures require written statements from the applicant/licensee detailing the events surrounding the conviction and copies of the court judgment to be submitted to the Commission.

Criminal convictions in Maine are classified as a Class A, B, C, D, or E crime. The difference between a Class A and E crime, for example, is that the maximum period of incarceration that may be imposed for a Class A crime exceeds 10 years and for the Class E crime incarceration may not exceed one year. The terms "felony" and misdemeanor" are also used to describe the type of crime but too often applicants/licensees assume that only a "felony" is a criminal conviction. Not so.

Motor vehicle violations may be civil or criminal, depending on the type of violation. "Operating Under the Influence" and "Operating After Suspension," for example, are criminal violations that must be disclosed.

When in doubt - disclose!

Both driver records and criminal history records are available, for a fee, online - go to www.state.me.us/ for information regarding these online state services.

Have you downloaded new change of license and agency record modification forms yet? Go to www.maineprofessionalreg.org, click on the "apply for a license" button, and select "R" for real estate. From our home page, look for the link that says "applications, forms and publications."

credit unions. The proposal further amends §13178 to authorize the Commission to adopt, by rule, standards for maintaining trust account records, which may include electronic records. In addition, the proposal includes a new subsection that would authorize the Commission to adopt, by rule, standards for maintaining brokerage records (records in addition to trust account-related records), including a record retention schedule;

(3) The proposal amends and enacts several subsections within Subchapter 7 currently titled Agency Relationships (proposed change to "Real Estate Brokerage Relationships"). The major proposed changes to Subchapter 7 include the following:

(A) Adopts a new definition - "transaction broker" to mean a real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent;

(B) Creates the presumption that a real estate brokerage agency is acting as a transaction broker unless the agency has agreed in a written brokerage agreement (see proposal to brokerage agreements, described in paragraph 1 above) to represent one or more of the parties as a client;

(C) Establishes a new provision that a transaction broker does not represent any party in a real estate transaction as a client;

(D) Establishes specific real estate transaction-related responsibilities for a transaction broker; and,

(E) Establishes three specific real estate transaction-related acts that a transaction broker is prohibited from performing.

Information on legislation, including bill text, hearing dates and other related information may be found at the following web site:

<http://www.maine.gov/portal/government/legislature.html>

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*Maine Real Estate News is a semi-annual
publication published under appropriation
014 02A 4060. This is a dedicated
revenue account consisting of funds
collected from licensing.*

Total licensees, as of
December 31, 2004:

Agencies
1245

Designated Brokers
1072

Brokers
1198

Associate Brokers
1730

Sales Agents
1800

Inactive licensees
(all types)
1556

Total: 8601

COMMISSION STAFF

Carol J. Leighton, Director
624-8520
carol.j.leighton@maine.gov

Karen L. Bivins, Deputy Director
624-8524
karen.l.bivins@maine.gov

Judy S. Brown, Examiner
624-8523
judith.s.brown@maine.gov

Susan A. Greenlaw
Secretary to the Director
624-8515
susan.a.greenlaw@maine.gov

Marilyn A. Lugner
Education Coordinator
624-8518
marilyn.a.lugner@maine.gov

Deborah A. Fales
Licensing & Examinations
624-8521
deborah.a.fales@maine.gov

Kimberly J. Baker-Stetson
Licensing & Examinations
Related Boards
624-8522
kimberly.j.baker-stetson@maine.gov

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Department of Professional and Financial Regulation
Maine Real Estate Commission
35 State House Station
Augusta, Maine 04333

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